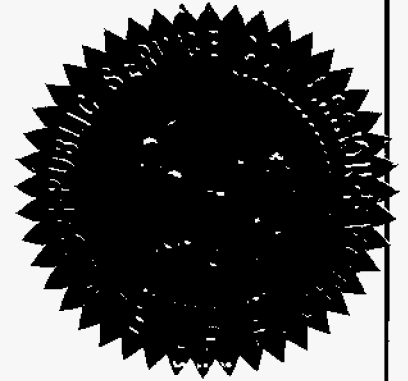


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 090478-WS

APPLICATION FOR ORIGINAL
CERTIFICATES FOR PROPOSED
WATER AND WASTEWATER SYSTEMS,
IN HERNANDO AND PASCO COUNTIES,
AND REQUEST FOR INITIAL RATES
AND CHARGES, BY SKYLAND
UTILITIES, LLC.



VOLUME 1

Pages 1 through 92

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PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, July 7, 2010

TIME: Commenced at 11:15 a.m.

PLACE: Southwest Florida Water Management
District's Board Room
2379 Broad Street

Brooksville, Florida 34604-6899

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER: 090478-WS-000001-000001
06068 JUL 23 2010
FPSC-CD-TRANS-000001-000001

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1
2 **CHAIRMAN ARGENZIANO:** We'll convene the
3 technical hearing and we'll start with taking up any
4 preliminary matters.

5 **MS. KLANCKE:** Madam Chairman, there are
6 several preliminary matters. First of all, there have
7 been several objections to exhibits that are proposed to
8 be entered into the record today. Staff notes that the
9 parties were advised at the Prehearing Conference that
10 objections to the admissibility of documents should be
11 raised at the time the party sponsoring the document
12 moves or attempts to move the presiding officer to enter
13 the document into the record.

14 We have -- staff has conversed with the
15 parties, and for the purposes of this technical hearing
16 and to ensure a streamlined process, we have asked them
17 with regard to objections based on the grounds that the
18 evidence contains or is comprised entirely of hearsay,
19 that those objections -- the parties will be afforded
20 the ability to make the objection. The party who is
21 arguing for admissibility will be able to respond as to
22 the grounds for admissibility. No ruling with regard to
23 those hearsay objections will be made at that time, but
24 rather the parties will be afforded the ability to make
25 those particular hearsay arguments in their briefs.

1 Staff is also, if it pleases the Commission,
2 perhaps we would like -- the Commission would like to
3 consider affording the parties with perhaps some
4 additional pages in their briefs for the purposes of
5 briefing these issues. Currently their briefs are
6 limited to 40 pages as contained in the Prehearing
7 Order. But if, if it is the desire of the parties that
8 they have expressed, we perhaps should consider giving
9 them additional pages.

10 **MR. WHARTON:** Madam Chairman, I believe that
11 it's a point that could be discussed at the end of the
12 hearing looking back with the knowledge of how many such
13 objections there were. But perhaps it could even be
14 done in a separate document and the briefs could be --
15 so whatever your pleasure is at that time.

16 **CHAIRMAN ARGENZIANO:** Commissioners? Anything
17 from the other parties?

18 **MR. HOLLIMON:** From Pasco County's
19 perspective, I believe we could probably get it done in
20 40 pages. But if we find that it takes more, if you
21 would be receptive to a motion for leave to include
22 additional pages, you know, within some reasonable
23 limit, that, that seems like that would be appropriate.

24 **CHAIRMAN ARGENZIANO:** I don't have any problem
25 with that. How about, Commissioners --

1 **COMMISSIONER EDGAR:** Madam Chair, again, of
2 course, I defer to your -- but since you asked, I think
3 that Mr. Wharton's suggestion that maybe we take it up
4 at the end when we have a better feeling for how much
5 discussion, how many objections, makes sense to me.

6 **CHAIRMAN ARGENZIANO:** Everybody okay? I think
7 that sounds like a good idea.

8 Okay. Ms. Klancke.

9 **MS. KLANCKE:** I do not believe that there are
10 any objections to admitting the Comprehensive Exhibit
11 List itself, just this document, into the record. Staff
12 will move to have that moved into the record, identified
13 as number, as Exhibit Number 1 and moved into the record
14 after opening statements.

15 **CHAIRMAN ARGENZIANO:** Okay.

16 **MS. KLANCKE:** But I just wanted to afford you
17 with the knowledge that we intend to do that and to
18 ensure that there were no objections to that.

19 As we have -- as you have seen in the customer
20 portion of this hearing, any additional exhibits will be
21 identified, that are identified during cross-examination
22 will be added to the end of that exhibit list. For
23 example, the map that was provided to us was, was
24 identified as Exhibit Number 41. Thus, any
25 cross-examination exhibits will start -- that are

1 additional to the ones that are listed on the
2 Comprehensive Exhibit List will start with Number 42.

3 Moving on with respect to perhaps the
4 presiding officer with regard to your pleasure regarding
5 breaks or the duration of timing, things like that, if
6 --

7 **CHAIRMAN ARGENZIANO:** I think what we'll do is
8 we have to make sure that we have -- our transcribers
9 get a break, a proper time for them, and I know they
10 have to switch out. I was thinking that lunch would be
11 around 1:15 to about 2:15, we'll go for that, and just
12 take short breaks in between, just our necessary breaks,
13 as Commissioner Carter used to say.

14 And, and if anybody needs a break, just let me
15 know, signal, and we'll, and we'll move to that. But
16 we're going to try to do as much as we can today and get
17 everything done, if we can. And then we have, remember,
18 we have the other service hearing at 6:00, which will
19 occur at 6:00. And if anybody wants to stay 'til
20 3:00 or 4:00 in the morning to continue, we can do that,
21 but I don't think that's really the desire of anyone.
22 So we'll try to give everybody due process and just move
23 along as fast as we can and hope that we don't have to
24 caution the parties about friendly cross too many times.
25 So maybe we can just, just go on. Okay?

1 **MS. KLANCKE:** I have a few other preliminary
2 matters to address. With respect to one little more
3 nuance with regard to objections, objections that are
4 not based on hearsay, for example, objections based on
5 relevancy, should be raised at the time the exhibit is
6 proffered to be moved into the record, and we will make
7 a ruling on non-hearsay objections at that time.

8 **CHAIRMAN ARGENZIANO:** And we are ten minutes?

9 **MS. KLANCKE:** Yes. With respect to witnesses,
10 there are several preliminary matters with regard to
11 witnesses.

12 First of all, as the Chairwoman just
13 specified, the time for witness summaries by virtue of
14 the Prehearing Order are limited to five minutes. In
15 addition, opening statements have been, have been
16 limited to ten minutes per party.

17 With respect to witnesses, I'd like to note
18 for the clarity of the record that via order issued
19 July 6th, 2010, this Commission has granted Hernando
20 County's unopposed motion to withdraw Paul Wieczorek as
21 a witness. Thus, when we take up the witnesses, we
22 will -- his entire testimony and his prefiled testimony
23 are no longer a part of this record. Rather, his, the
24 issues that he discussed in his prefiled testimony are
25 covered by, by another witness, and so we will not call

1 him to the stand.

2 In addition, both Hernando and Pasco County
3 have filed surrebuttal testimony in this docket.
4 Surrebuttal witnesses that are not currently listed in
5 the Prehearing Order because they were filed after the
6 Prehearing Order was issued will be taken up immediately
7 following the utility's rebuttal testimony.

8 Skyland has also made a request that their
9 rebuttal witnesses be able to address the testimony of
10 one of the individuals who provided public testimony; is
11 that correct?

12 **MR. WHARTON:** If I may, Madam Chairman.

13 **CHAIRMAN ARGENZIANO:** You're recognized.

14 Excuse me.

15 **MR. WHARTON:** I have been involved in many
16 Commission proceedings in which late-filed exhibits were
17 allowed, perhaps belying how long that I have practiced
18 in front of the Commission. I have both utilized that
19 method and railed against it. I know there have been
20 some concerns about it in cases, so I have heard staff
21 counsel say.

22 What we would request is that when
23 Mr. Hartman, a single witness, produces his rebuttal
24 testimony, that he be allowed to, in a tight and focused
25 manner, a couple, three questions, did you hear, do you

1 disagree with, do you have any testimony about that, be
2 allowed to address those comments. He would then be
3 submitted to potentially the cross-examination of five
4 lawyers, and we would ask that Mr. Hartman be allowed to
5 respond to Mr. Radacky's comments on rebuttal.

6 **MS. KLANCKE:** Staff has no issue with that.

7 **CHAIRMAN ARGENZIANO:** Commissioners?

8 **MR. HOLLIMON:** Madam Chairman?

9 **MS. KLANCKE:** I believe that the -- Pasco
10 County?

11 **MR. HOLLIMON:** I believe that Mr. Hartman may
12 have already addressed in his either direct or rebuttal
13 testimony some of the very issues. So to the extent
14 that he's not providing surrebuttal testimony, we would
15 agree. However, I believe that there may be some issues
16 to which Mr. Hartman has already addressed and that the
17 public testimony was in effect rebuttal to existing
18 testimony of Mr. Hartman. So if they're asking for
19 surrebuttal, Pasco County does not agree.

20 **MR. WHARTON:** Well, we're asking to be allowed
21 to present live testimony, again, that is focused and
22 tightly within the scope of some of the points that
23 Mr. Radacky made.

24 **CHAIRMAN ARGENZIANO:** Ms. Klancke, if it's, if
25 it is tightly addressed, I --

1 **MS. KLANCKE:** Certainly. If it's narrowly
2 tailored with respect to that individual's testimony
3 regarding his own personal testimony that he's provided
4 on his, based on his own personal opinion as we've
5 stated here during the customer portion, it is novel and
6 thus I believe it will be admissible. Provided that at
7 that time, you know, all cross-examination -- you'll be
8 afforded the ability to cross-examine that witness.

9 **MR. KIRK:** Hernando County would concur.

10 **CHAIRMAN ARGENZIANO:** Okay. All right. Let's
11 move forward.

12 **MS. KLANCKE:** There's a couple of other
13 additional preliminary matters. On June 25th, 2010,
14 Pasco filed its motion to compel. At the Prehearing
15 Conference held on June 28th, the parties entered into
16 an agreement to resolve that motion to compel. It has
17 come to staff's attention that the parties weren't able
18 in part to resolve the motion to compel pursuant to
19 their agreement since the date of that Prehearing
20 Conference.

21 Staff would suggest that the parties be
22 afforded the opportunity to raise any lingering issues
23 or concerns with regard to that agreement and lack of
24 compliance thereof, if that is their assertion.

25 **MR. WHARTON:** It's news to me, so I think

1 Pasco County ought to go first.

2 **MR. HOLLIMON:** Well, I'd like to offer this.
3 The motion to compel that was filed, Mr. Wharton and I
4 had a discussion at the Prehearing Conference and, in
5 fairness I think to both of us, we didn't deal with one
6 issue that was in the motion to compel. We subsequently
7 talked about that issue and a response was provided to
8 the issue we hadn't addressed at that time.

9 However, the supplemental response that was
10 provided with respect -- as part of our agreement, Pasco
11 County contends that that response still is not a
12 noninvasive and complete answer. Okay? So while we
13 have gotten an additional response, our position is that
14 that response did not, does not meet the requirements of
15 an interrogatory response. Okay?

16 We understand fully that the clock has run out
17 on this. Okay? So I'm not going to, I'm not going to
18 beat this to death, but I want, I want you to know. But
19 the other thing is, the other preliminary issue that I
20 want to be able to talk about is I want to make a, I
21 want to have the -- I filed two motions to strike, Pasco
22 County has filed two motions to strike, both of which
23 were denied. I would like to move for reconsideration
24 of those two. And as part of that, part of -- I'd like
25 a few minutes to talk about that, and as part of that

1 you'll see why the motion to compel is an important
2 issue.

3 **MR. WHARTON:** If I may respond to that second
4 motion.

5 **CHAIRMAN ARGENZIANO:** Yes.

6 **MR. WHARTON:** First of all, there is no motion
7 for reconsideration authorized under the uniform rule.
8 Secondly, I, to use the vernacular, was loaded for bear
9 on that. But I now have seen Commissioner Skop's order
10 that came out yesterday, and I don't have it in front of
11 me. I filed 25 pages of responses to those two motions.
12 They've been considered and they've been ruled upon. I
13 think that to reconsider that under these circumstances
14 is going to put parties in the position of whenever the
15 Prehearing Officer rules, well, I'll take a shot at the
16 panel and see if I can get that reversed. I do not
17 think those orders -- the ink is still drying on that
18 other order that was just issued yesterday -- should be
19 reconsidered by this panel.

20 **CHAIRMAN ARGENZIANO:** Ms. Klancke.

21 **MS. KLANCKE:** I believe that this is a novel
22 motion for reconsideration and thus he's making it
23 orally. To the extent that your previous response
24 touches upon matters that he may or may not address,
25 that's something that needs to be made in your response.

1 I believe, if it pleases the Commission, the
2 County and all the parties should be afforded the
3 ability to -- he should be able to make his motion, he
4 should state the grounds with particularity for that
5 motion, including the statutory authority to do so, and
6 you'll be afforded the ability to respond.

7 **MR. WHARTON:** And if I understand what staff
8 counsel is saying, it's the motion for reconsideration
9 we're going to argue right now, not the merits. If
10 that's granted, then we're going to reargue Commissioner
11 Skop's -- okay.

12 **MS. KLANCKE:** That's correct.

13 **MR. WHARTON:** Thank you.

14 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

15 **COMMISSIONER SKOP:** Thank you, Madam Chair.
16 Just to give some insight and background into the
17 procedural posture that we're in with respect to
18 preliminary matters, there were a batch of motions that
19 came in. There was -- that I ruled upon. One was a
20 motion to strike, the other one was a motion to compel.
21 And there was a third motion that, to have draft orders,
22 I think, that we ruled upon.

23 But to the ones that are germane to the
24 discussion here, the motion to strike was denied on the
25 basis essentially that the parties are free to present

1 their testimony. The Commission is, will give the
2 witness testimony the weight that it's deserved. The
3 parties have the opportunity to contemporaneously object
4 or to cross-examine. So I think that that addressed my
5 concerns with respect to the first motion to strike.

6 The motion to compel is a little bit
7 different. I think the County has made some very good
8 arguments to the extent that, particularly in light of
9 compensation data that was, should have been provided
10 pursuant to the Florida Rules of Civil Procedure. It
11 seemed to be that there was some dilatory tactics going
12 on in providing responses. Apparently I allowed the
13 parties to work that out. They, they had an agreement
14 amongst themselves with the understanding that at the
15 appropriate time the Counties would file a motion to
16 withdraw the motion to compel. Apparently that did not
17 happen. There seems to be some underlying tension in
18 relation to some of the subject matter that the parties
19 did not discuss while they were before me at the
20 prehearing on that.

21 And with respect to the most recent motion to
22 strike, basically that was denied on the same grounds as
23 the previous one, stating with specificity within the
24 order the reasons why that, you know, it was denied, as
25 well as how the parties were adequately protected by

1 having the means to object and also to cross-examine the
2 witnesses, and that the Commission will give the witness
3 testimony the weight it's due. So I just wanted to
4 provide a little background on that, Madam Chair.

5 **CHAIRMAN ARGENZIANO:** Okay. Thank you.

6 **COMMISSIONER SKOP:** And also, too, motions for
7 reconsideration, again, I'm the Prehearing Officer
8 certainly before the full panel, the full Commission. I
9 think that, you know, I don't want to see that become a
10 practice, as Mr. Wharton says, but I have seen it used
11 in rare instances where the parties felt reconsideration
12 was warranted on a specific ground. So I'll defer to
13 the Commission on that. Thank you.

14 **CHAIRMAN ARGENZIANO:** Any other preliminary
15 matters?

16 **MS. KLANCKE:** I think if there is nothing else
17 before the -- if it is your pleasure to allow the party
18 to make his motion for reconsideration, perhaps that
19 should be entertained at this time.

20 **CHAIRMAN ARGENZIANO:** You're recognized.

21 **MR. HOLLIMON:** Thank you, Madam Chairman.
22 I'll note that on the last paragraph of the order
23 entered yesterday denying a motion to strike, it states,
24 "Any party adversely affected by this order which is
25 preliminary, procedural or intermediate in nature may

1 request, one, reconsideration within ten days pursuant
2 to Rule 25 --

3 **CHAIRMAN ARGENZIANO:** Excuse me. Sorry.
4 Excuse me one moment.

5 **COMMISSIONER EDGAR:** Thank you, Madam
6 Chairman. And my apologies, Mr. Hollimon. But I was
7 traveling yesterday. I was not aware that prehearing
8 orders were issued or in response to motions, so I have
9 not read them. My apologies. I was not aware. I was
10 traveling. I would certainly like to have a copy, if it
11 is something that we are going to reference, so I don't
12 have to ask you to read much more slowly. So if you
13 could maybe hold a minute, and if staff could get me a
14 copy.

15 **CHAIRMAN ARGENZIANO:** Why don't we just take a
16 few minutes until we get that distributed and we'll
17 return in just a couple of minutes.

18 **COMMISSIONER EDGAR:** Thank you.

19 **CHAIRMAN ARGENZIANO:** Thank you.

20 **COMMISSIONER SKOP:** And also, Madam Chair,
21 just on the record to Commissioner Edgar's concern, a
22 lot of these motions were, you know, not really timely
23 filed. They came in in spurries kind of late and the
24 Commission dealt with those in the best manner that we
25 could. Our staff was working the entire weekend,

1 through the holiday weekend preparing the responsive
2 orders for my signature that I signed yesterday.

3 **COMMISSIONER EDGAR:** And I would just say my
4 comments are in no way a criticism of the timeliness.
5 Candidly, I would have expected a copy here this morning
6 before the proceeding. But I do not have one and so I
7 would like to take a moment to look it over, if it is
8 something we're going to discuss.

9 **CHAIRMAN ARGENZIANO:** And we are going to take
10 a few minutes for that to be handed out and reviewed.

11 **COMMISSIONER EDGAR:** Thank you.

12 (Recess taken.)

13 **CHAIRMAN ARGENZIANO:** It looks like we're back
14 on.

15 Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Yes. Thank you, Madam
17 Chair, Commissioner Argenziano and Commissioner Skop.
18 And to the parties, I apologize for the delay. I know
19 we have a lot of work to do. We just had a little
20 miscommunication and I had not seen these orders that
21 were issued late yesterday. If we're going to discuss
22 them, I appreciate the opportunity to have reviewed them
23 myself. So, again, I know we have work to do. Sorry
24 for that, but I appreciate the time and I'm ready to go.

25 **CHAIRMAN ARGENZIANO:** No problem. Okay.

1 **MR. HOLLIMON:** I appreciate the time too
2 because I didn't get it until this morning either, so.

3 All right. So what I'd like to do is begin my
4 remarks about the motion to, for reconsideration, which
5 by the way are only directed to the second motion to
6 strike, the one that was entered yesterday. Okay? But
7 as a preliminary matter I want to address the motion to
8 compel. Okay?

9 The motion to compel asked an interrogatory
10 related to expert witnesses. The interrogatory is
11 specifically identified in the rules of procedure, the
12 interrogatory quotes verbatim the language in the rule,
13 and that interrogatory was propounded. And basically
14 this interrogatory wanted to know who your expert
15 witnesses are, what the subject matter of their
16 testimony will be, and what's the substance of their, of
17 the opinion, the grounds for each opinion. Excuse me.

18 **MS. KLANCKE:** May, may I interject for just
19 one moment?

20 **MR. HOLLIMON:** Yes.

21 **MS. KLANCKE:** I apologize.

22 **CHAIRMAN ARGENZIANO:** Go right ahead.

23 **MS. KLANCKE:** There was no order issued on the
24 motion to compel because they were able to reach a
25 separate agreement. Thus, to the extent that we aren't

1 able to reconsider any ruling on, with respect to that
2 motion, no ruling was propounded.

3 **MR. HOLLIMON:** I'm not asking for
4 reconsideration on the motion to compel. I tried to
5 make it clear that what I wanted to do was just make a
6 few comments about it as it was, as it is important to
7 the motion for reconsideration because I understand the
8 clock has run out on my motion to compel. So I'm not
9 asking for anything on the motion to compel. I am
10 simply laying some background for the motion for
11 reconsideration.

12 **MS. KLANCKE:** Okay.

13 **MR. HOLLIMON:** Okay. So the standard
14 interrogatory was propounded, and the response that came
15 back was the identity and testimony of each witness,
16 expert or otherwise, is set forth with specificity in
17 either the prefiled testimony of Skyland, the staff,
18 Pasco and Hernando County, or the deposition transcripts
19 or depositions taken in this case. These matters
20 including though not limited to the scope of employment
21 in the case, the compensation for services and the
22 experts' general litigation experiences are a matter of
23 deposition record.

24 Okay? So I filed a motion to compel because,
25 in fact, those things are not matters of deposition

1 record, and received another response. And the second
2 response -- again, and the reason why I propounded this
3 interrogatory is that Mr. Hartman's testimony, he is not
4 offered expressly as an expert in anything. He
5 testifies that he has experience in many areas. He
6 attaches his resumé, which demonstrates experience in
7 many areas. But his testimony does not expressly and
8 explicitly say I'm an expert in these areas. Therefore,
9 I was having a hard time determining which aspects of
10 his testimony were being offered as expert opinion and
11 which aspects were being offered as a lay witness, a
12 fact witness. So that's why I propounded this
13 interrogatory.

14 The supplemental response that was provided
15 did not address the concern. It did not identify it.
16 It said instead of saying just go look at the testimony
17 in the deposition transcripts, it effectively said go
18 look harder at the deposition transcripts and the
19 testimony. Okay?

20 So I'm still in the position of not knowing
21 exactly what Skyland considers to be the expert
22 testimony of its witness and what it considers to be the
23 fact testimony. So that's the background for the motion
24 for reconsideration.

25 The motion for reconsideration is based upon a

1 mistake, I believe, in the law here. And that mistake
2 is in the order denying -- I'm going to refer to
3 Skyland's response section, which I believe is accurate.
4 It says, "Skyland asserts the motion to strike is in
5 effect two motions: A motion to strike a portion of
6 Witness Hartman's prefiled direct testimony and an
7 objection to the admittance of portions of Skyland's
8 application into the record." Okay. I believe that's
9 an accurate characterization of the motion that Pasco
10 County filed.

11 Now the order, however, simply it seems to
12 indicate that the documents are admissible. Okay?
13 Well, the issues raised in the motion have to do with
14 whether or not the witness, who has no personal
15 knowledge -- again, personal knowledge is important
16 because as a lay witness you have to testify from
17 personal, from personal knowledge. If you're an, if
18 you're an expert witness, you may opine on issues.
19 Okay? Well, I can't tell what's what in the testimony.
20 I can't get a response from Skyland about what's what in
21 the testimony. And now that's why I filed my motion to
22 strike based upon he doesn't have personal knowledge in
23 order to authenticate documents that he offers into the
24 record.

25 I don't see that issue addressed in this, in

1 this order. And so my motion for reconsideration is
2 based upon a mistake in the law here because there is
3 no -- the issue of whether or not Mr. Hartman can
4 authenticate hearsay documents, therefore admit them and
5 sponsor them as exhibits in the record does not appear
6 to be addressed here.

7 **CHAIRMAN ARGENZIANO:** Ms. Klancke.

8 **MR. WHARTON:** If I may, Madam Chairman.

9 **CHAIRMAN ARGENZIANO:** Yes, please.

10 **MR. WHARTON:** Okay. First of all, what you've
11 just heard is the classic nonbasis for reconsideration.
12 There was a mistake. You made a mistake; Commissioner
13 Skop made a mistake. I don't have the cases in front of
14 me because this motion is, this motion is being made ore
15 tenus. But the Commission has issued a plethora of
16 orders saying that reconsideration should be based upon
17 something that was overlooked, something that was
18 missed, not just I think if you think about this again,
19 you'll, you'll see that I was right.

20 Now having said that, and because Commissioner
21 Skop took the time to try to work this out in a break in
22 the Prehearing Conference, I cannot let this stand about
23 the interrogatory. It apparently has something to do
24 with something, even if it's not a motion to compel.

25 So let me say that first of all this is the

1 problem, isn't it, with tendering interrogatories 30
2 days before the discovery cutoff in a case that has been
3 around 230 days. Here we are.

4 The second is that this is where I find
5 myself. In case you were confused by counsel's
6 comments, he wrote me an e-mail on Thursday and said, "I
7 received Skyland's response to Interrogatories 9 and 12
8 but note that I did not receive a response to
9 Interrogatory 1, which was also included in the motion
10 to compel. My understanding from our discussion was the
11 only discussion that was withdrawn was the two
12 admissions directed to the Water Management District
13 rule." I wrote back and said, and by that time I had
14 the transcript, "That does not appear to me to have been
15 discussed or resolved at the Prehearing Conference.
16 However, we will supplement our response to
17 Interrogatory 1 and give it to you at the commencement
18 of the hearing," I actually filed it yesterday, "if it
19 will resolve these issues." And the answer back was,
20 "That will do it. Thanks, John."

21 And understand something, he's not moving --
22 he's not complaining about the answer we gave him
23 yesterday. He's complaining about one we gave him last
24 Wednesday. But I didn't hear about it until 6:22 this
25 morning when I got an e-mail at 6:22 saying this is a

1 problem.

2 Commissioner Skop heard oral argument, he
3 heard the staff's recommendation, he agreed with the
4 staff's recommendation, he stated the basis for his
5 ruling. I'll tell you, looking through the notes that
6 I've put away because I didn't think I was going to need
7 them today, I had come with a variety of things to
8 discuss with the Commissioner if in fact he had granted
9 the motion. And I don't believe that the basis for
10 reconsideration has been established.

11 **CHAIRMAN ARGENZIANO:** Thank you.

12 Ms. Klancke.

13 **MS. KLANCKE:** The standard of review for a
14 motion for reconsideration is whether the motion
15 identifies a point of fact or law that the Prehearing
16 Officer or the presiding officer overlooked or failed to
17 consider in rendering his or her order. In a motion for
18 reconsideration it is not appropriate to reargue matters
19 that have already been considered.

20 In the instant case, it is staff's opinion
21 that Pasco County has raised issues that were contained
22 in their motion. Those issues, those arguments are
23 merely being reiterated. They were considered by this
24 Commission.

25 If they are not specifically enumerated and

1 reiterated in our determination, it is not indicia that
2 they were not considered, but rather merely they became
3 part of our consideration and analysis and formed part
4 of the reason for our ruling. In the instant case, the
5 ruling paragraph is clear as to the admissibility. I
6 believe there are also certain safeguards with respect
7 to this order on a going-forward basis in this technical
8 hearing.

9 The parties, if they consider those particular
10 exhibits or portions of testimony that they take umbrage
11 to can raise additional objections. The order merely
12 specifies that they should not be stricken from the
13 record for consideration and, rather, are admissible for
14 purposes of going forward in this proceeding. Thus,
15 staff believes that the motion for reconsideration does
16 not satisfy the standard of review with respect to the
17 fact that Pasco County, in its ore tenus motion, has not
18 raised any new or previously not considered arguments of
19 fact or law.

20 **CHAIRMAN ARGENZIANO:** Commissioners?

21 Commissioner Skop, did you have your hand up?

22 **COMMISSIONER SKOP:** Thank you, Madam Chair.

23 I wanted to add a little clarity because,
24 again, it seems that the issues are being twisted
25 between the first batch of motions, the motion to

1 compel, the, I mean, the second motion to strike. And,
2 you know, I don't have the benefit of having the
3 transcript with me. If I were a betting man, I would
4 imagine Mr. Wharton might have a copy of the prehearing
5 transcript. But staff's recommendation was very clear,
6 very express as it pertained to the motion to strike,
7 the reasons for why the motion to strike was properly
8 denied, addressing the County's concerns with respect to
9 the expert witness, what they would be, you know,
10 offered as in terms of providing expert testimony in the
11 areas where they were not clearly qualified as an expert
12 witness. Obviously there's some, some tension amongst
13 the parties in terms of motion practice here.

14 But I think what's important to the
15 Commission, what's important to the people of the State
16 of Florida is to hear all of the record evidence, to
17 have a complete record, let the Commission make a
18 decision on the merits in a fair and impartial manner.
19 And we seem to be spending a tremendous amount of time
20 debating issues that I think were properly and fairly
21 decided at prehearing, but certainly are worthy of
22 taking up on reconsideration if they meet the legal
23 standard.

24 But, you know, I think that if I had that
25 excerpt from the transcript at prehearing of the staff

1 recommendation as it pertained to the first motion to
2 strike, I think that would give great clarity to the
3 reasons for why the motion was properly denied, how I
4 addressed the concerns of the parties with respect to
5 the expert witness and the concerns that arose there,
6 and also how the County's concerns on the motion to
7 compel, which I did not rule upon because I thought in
8 the best interest, given the adversarial nature of the
9 parties, let them go, give them some time. I gave them
10 30 minutes to work out their differences and they came
11 back with a, with a gentleman's agreement that they
12 would work out those differences so I did not have to
13 rule.

14 If I would have had to rule on the motion to
15 compel for the specific incidence of providing the data
16 commensurate with the Rule of Civil Procedure, I would
17 have ruled in favor of the County because clearly the
18 deposition -- the information was not provided in the
19 deposition. But, again, that matter is behind us. I
20 think that we're dealing with a motion to strike. But
21 what I see is all these issues getting intertwined and
22 it's hard to discern what issue we're actually talking
23 about when it comes forth to reconsideration. That's
24 just my perspective, Madam Chair.

25 **CHAIRMAN ARGENZIANO:** Okay. Commissioner

1 Edgar, did you have any comments or are we ready to move
2 on?

3 **COMMISSIONER EDGAR:** I'm ready to move on.

4 **CHAIRMAN ARGENZIANO:** Okay. Then I guess I
5 make the determination, and I think the motion is
6 denied. I think staff has made its point. And the
7 Commission, I'm sure, will give the testimony the weight
8 it's due. Okay.

9 **MS. KLANCKE:** Madam Chairman, at this time I
10 do not have any additional preliminary matters.

11 **CHAIRMAN ARGENZIANO:** Okay. Then let's move
12 on to opening statements.

13 **MS. KLANCKE:** Staff would like to note and
14 reiterate after that, that long duration that each
15 opening statement has been limited to ten minutes per
16 party.

17 **CHAIRMAN ARGENZIANO:** Have all the, have all
18 the witnesses been sworn in this morning? If, if you
19 have not, please raise your hand and we'll do it again.
20 It looks like we're ready to go.

21 And we are, I believe, moving in the order
22 that appears in the Prehearing Order? Okay. Then that
23 would be Skyland.

24 **MR. WHARTON:** Thank you, Madam Chair.

25 **CHAIRMAN ARGENZIANO:** Mr. Hartman.

1 **MR. WHARTON:** Commissioners, bear with me, if
2 you will. I will not only address what we contend that
3 the record in this case will show, but also some of your
4 past orders which we believe directly relate to this
5 proposal. When I am citing those orders, I will, for
6 the sake of expediency, not give full citations because
7 we're going to talk to you about those in the brief
8 also.

9 Commissioner Skop, understanding that there
10 was the potential for 40 other minutes of opening
11 statements, discussed with me at the Prehearing
12 Conference whether we needed more than ten minutes, and
13 I indicated we did not. And I will try to stay within
14 ten minutes, but I hope that you will give me some
15 latitude in that regard.

16 Commissioners, this case is atypical in two
17 ways. The first is the type and nature of this
18 application, and I'll talk to the Commission about that
19 in a minute. The second is the posture of these
20 particular Intervenors in the form of Hernando County
21 and Pasco County. Your very existence as a Commission
22 and the fact that we are here today is evidence that the
23 Legislature has decreed that in our state private
24 utilities are a lawful activity and that they should be
25 created and certificated to provide service in areas as

1 the Commission deems appropriate. That's a decision
2 that's been made on a statewide basis. It's a decision
3 that can't be reasonably questioned and which is not
4 under any legitimate challenge. And your decisions,
5 Commissioners, are necessarily made for the long-term
6 and are not driven by the wishes and desires of local
7 authorities as they exist in the form of any particular
8 county commission at any particular moment. Your
9 jurisdiction not only exists, it is not only
10 unchallenged, it is exclusive. And yet despite the
11 exclusivity of your jurisdiction, the record will show
12 that Hernando County in the form of its comprehensive
13 plan has attempted to enact into law that new private
14 utilities in the county are unlawful.

15 The comprehensive plan has the force and
16 effect of law, no new private utilities, and that they
17 can never be consistent with the comprehensive plan.
18 Pasco County has all but done the same, writing into its
19 comp plan that private utilities should be discouraged,
20 the conversion of private utilities to public is the
21 County's policy, that service by the governmental
22 utility is preferred, and that service by private
23 utilities will for all intents and purposes be
24 prohibited.

25 When I finish my opening statement, you'll

1 hear assumably for 30 minutes from local governments all
2 of the things that are wrong with Skyland's proposal.
3 And yet you must remember you are hearing from local
4 governments that have made a decision that no private
5 utility should exist within their jurisdictional
6 boundary despite clear state law to the contrary. This
7 is the context, this is the template upon which these
8 objections are made -- no new private utilities.

9 The evidence will demonstrate that every
10 single witness for the Intervenors will admit that the
11 objection to Skyland is a categorical one. It's nothing
12 unique to Skyland or its operations or its expertise or
13 its financial ability or the extent to which it can or
14 cannot meet the application criteria, but rather its
15 great sin is at the gate formed by these provisions in
16 the comprehensive plans which it cannot pass because it
17 is a private utility.

18 I want to talk to you a little bit about the
19 property owner. Evans Properties is the property owner
20 that has formed the corporation that is Skyland. While
21 you will properly focus upon the application of Skyland
22 in this proceeding, this application is actually one of
23 three filed contemporaneously by Evans Properties for
24 large land holdings in the State of Florida. In each
25 case, a corporate entity such as Skyland was formed to

1 operate as the utility company.

2 Now you'll hear evidence that Evans Properties
3 has owned most of this land for over 50 years.
4 Mr. Edwards, who is the president of Skyland and the CEO
5 and president of Evans Properties, will talk to you
6 about the need for utility service, as will Mr. Hartman,
7 and the long range planning and resource protection that
8 Evans Properties desires to achieve for its lands, and
9 the transition that Evans Properties will inevitably
10 make as this part of the state changes from historically
11 agricultural activities to other appropriate uses, not
12 necessarily high densities, in the future.

13 Evans believes that it is the inevitable --
14 that it is inevitable that the transition away from
15 citrus will occur, and that has been Evans' principal
16 business, and that the long-term sustainability of its
17 business and its ownership of the land will be fostered
18 and enhanced by the creation of the utility in a way
19 that it believes is in the public interest and to the
20 public benefit.

21 Now not all of these uses are apparent or
22 self-apparent right now, and we understand that. But
23 Mr. Edwards has addressed some of the potentialities,
24 and the Commission has acknowledged in prior orders that
25 the type of large landowners which Evans embodies are

1 the appropriate recipients for certificates under the
2 right circumstances. That's something I'll talk to you
3 about in a moment.

4 Let's talk about the application criteria.
5 That Skyland meets the great balance of the criteria is
6 revealed by the fact that it is completely uncontested
7 from any affirmative testimony or opinions that much of
8 that criteria is met. Now you're going to hear various
9 arguments to bar evidence of the application, bar
10 admittance of the application, but you're not going to
11 hear one Intervenor witness give an opinion or be of the
12 opinion or be of personal knowledge that Skyland does
13 not have the financial ability to effectuate its
14 proposal, that Skyland does not have the operational
15 ability to effectuate its proposal, that Skyland doesn't
16 have the technical ability to effectuate its proposal or
17 that Skyland won't have the land. In fact, Skyland has
18 the full support of the owner of all of the lands it
19 seeks to certificate needed to meet the criteria.

20 Skyland will also not be in duplication with
21 or complication -- or competition with any existing
22 facility. That phrase has been thrown around some in
23 the testimony. But I would refer the Commission to a
24 decision that it made in the *Farmton* case in which it
25 said we cannot determine whether a proposed system will

1 be in competition with or duplication of another system
2 when such other system does not exist.

3 We would -- we do not believe Section 367.0455
4 requires the Commission to hypothesize which of the two
5 proposed systems might be in place first and, thus,
6 which would compete with or duplicate the other.
7 Engaging in such speculation would be of little use.
8 And the evidence will be clear here: Pasco County is
9 not in this area, Brooksville is not in this area,
10 Hernando is not in this area. There are no facilities
11 of those utilities that are on any of the lands Skyland
12 seeks to certificate.

13 We would suggest that the legitimate and
14 appropriately contested issues in this proceeding are
15 the public interest, which is always the overriding
16 consideration that drives the Commission's decisions.
17 Has the requisite need, given the facts and
18 circumstances of this applicant, the fact that the
19 ultimate parent of the utility applicant owns all the
20 lands and the Commission's precedents on similar
21 applications been demonstrated such that the utility
22 should be certificated? Is the application consistent
23 with the comprehensive plans of Pasco and Hernando
24 County? And if not, should the Commission choose under
25 these facts and circumstances to deny the application

1 based on that inconsistency despite the declaration in
2 367 that you are not bound to reach that determination,
3 or should the Commission choose, notwithstanding a
4 finding of such inconsistency, to certificate Skyland?

5 That is exactly what the Commission did in a
6 case that, again, is very similar to the case at hand.
7 In the *Farmton* case, the Commission ruled, "Although
8 Farmton's application and our granting of a certificate
9 to Farmton appears to be inconsistent with provisions of
10 the Brevard and Volusia County Comprehensive Plans, in
11 light of the evidence presented in this case, that
12 inconsistency shall not cause us to deny the utility's
13 application."

14 We maintain in this case that there is no
15 inconsistency with the growth management provisions of
16 these comp plans, except what I've told you about, these
17 gatekeeper provisions that say no new private utilities.
18 We're not going to be able to demonstrate consistency
19 with that. That's obvious. But by the precedents that
20 you have set in the appropriate circumstances, we think
21 this Commission should exercise its prerogative to issue
22 the certificate, notwithstanding such a finding should
23 you, in fact, determine such an inconsistency.

24 In the *Farmton* case this Commission ruled,
25 "The evidence presented clearly shows that a county's

1 control over development is not reduced with the issue
2 of a certificate. Our certification does not deprive
3 the counties of any authority they have to control urban
4 sprawl on the Farmton properties. Therefore, we find
5 that the issuance of a PSC certificate does not result
6 in urban sprawl or harm to the environment." These same
7 claims have been raised in this case, and we believe
8 that the evidence will demonstrate this particular
9 truism again.

10 Now we've already talked about the perspective
11 of the expert planners from Pasco and Hernando. They
12 represent counties that have attempted to essentially
13 legally foreclose new utilities under the guise of
14 comprehensive planning.

15 Now from these planners you will hear two
16 things. One is that every single growth management tool
17 which is available to local government now to meet the
18 kind of concerns the planners will testify about and to
19 implement the Growth Management Act, which is the
20 enabling statute upon which these planners rely, will
21 fully and completely remain in place if Skyland is
22 granted the certificate. Giving the certificate to
23 Skyland will not require or compel or guarantee or
24 ensure or otherwise force some sort of an undesirable
25 growth result on local government or local residents.

1 There may be some fear on the part of
2 particular planners that local government itself as
3 embodied in local government officials who make these
4 decisions might be more likely to allow the growth that
5 they seem to be categorically against to occur. But
6 once again, that'll be a local political and
7 administrative decision, just as it is now, whether
8 Skyland is granted the certificate or not.

9 A second thing you'll hear from the planners
10 is that not one will be able to tell you of a single
11 instance anywhere in the State of Florida where the
12 granting of a Public Service Commission certificate to a
13 utility in a similar circumstance or even a dissimilar
14 circumstance has led to urban sprawl or the sort of
15 growth management concerns which drive their opinion.
16 Once again, if there are places in Florida where that
17 has occurred, it's because local officials for whatever
18 reason allowed that to occur.

19 The evidence will show that the expert planner
20 called by the staff has taken a position that's very
21 typical of DCA in these actions, that his opinion, at
22 least in part, rests upon the opinions of the planners
23 for Pasco and Hernando whom he contacted prior to
24 writing the letter that is included with his testimony,
25 and, again, the perspective of those planners working

1 for governments who are categorically against new
2 private utilities we've discussed.

3 Now we think that you must consider this
4 context when you determine what extent and through what
5 prism you will apply the tenets of the Growth Management
6 Act. The Legislature has provided you, among all the
7 agencies, with the authority that you don't even have to
8 consider these plans and these applications unless
9 they're raised by local government. And then even if
10 they are raised by local government, you are not bound
11 by them.

12 We believe that the evidence will show clearly
13 and without doubt that as a matter of theory and policy
14 and the applicable criteria and historical fact that the
15 underlying concerns of these planners will not and
16 cannot occur as a result of your action. What these
17 planners are actually concerned about cannot and will
18 not occur unless the very governments that employ them
19 and other agencies with permitting, zoning, regulatory
20 and other various levels of oversight not only allow but
21 affirmatively decide that should occur.

22 Now you'll hear evidence and receive citations
23 in the posthearing filings of other cases in which urban
24 sprawl was raised by local officials in the DCA. In
25 each and every case that issue has been revealed by the

1 passage of time to be a red herring. Neither -- none of
2 Hernando or Pasco's witnesses nor the DCA witness will
3 ever be able to say we warned you about this, we wrote a
4 letter saying it would create urban sprawl, you
5 certificated them anyway and it happened. This was a
6 concern that was raised in 1992, and, again, on a piece
7 of property, ECFS, in which none of that occurred.

8 On the issue of need, it's an important issue,
9 but the testimony you'll hear from the Intervenors is
10 entirely situational and obviously tailored to oppose
11 Skyland. You're going to hear, well, there's no need in
12 these areas, but you're also going to hear those are our
13 service areas. You're going to hear, well, we've
14 actually discussed extending service out near there, but
15 it was too expensive and not economical. You're going
16 to hear we don't have any plans to serve out there.
17 You've also read, now filed in the surrebuttal, well, we
18 might be able to serve out there, but you never actually
19 asked us to. And from the planners you're going to hear
20 no one ought to serve out there.

21 There is an issue occurring in that part of
22 the county, Hernando County, that you will learn about
23 with 200 to 300 contaminated wells that Hernando County
24 has decided they are unable to rise as necessary to meet
25 that problem and provide service to those persons and

1 the wells, despite DEP's request to do so. The planners
2 don't even think service should be rendered out there.
3 They think that also would be violative of the
4 comprehensive plan.

5 In closing, you know, as I said at the
6 beginning, this proposal is not a typical proposal for
7 the certification of a new water and wastewater utility
8 that normally comes before the Commission, but neither
9 is it unique. In 1992 in *East Central Florida Services*
10 this Commission found, "It is common for this Commission
11 to grant an original water certificate and approve rates
12 for services for which there is no present quantifiable
13 mean but which may be in demand at a future time. The
14 granting of a certificate to provide water service in a
15 territory does not imply that the certificate is issued
16 for any specific class of service."

17 In that case, the Commission opined, "We are
18 concerned with the size of the proposed certificated
19 territory in this case," some 300,000 acres in the case
20 of *ECFS*, "and the configuration of the facilities
21 within, and clearly the need for service is not
22 pervasive throughout the territory. This concern is not
23 cause to deny the certification. We do not think it is
24 in the public interest at this time to carve up a vast
25 territory which is all owned by one entity so as to

1 certificate only scattered portions thereof."

2 In the more recent case, *Farmton*, just as in
3 this case, Farmton said we're seeking this certificate
4 in part for long range planning purposes to allow it to
5 be prepared to service as and when needed to any
6 residential, commercial and industrial development.
7 That is the same reason for the application here. The
8 Commission held that while it is unclear what future
9 needs will be within the territory, that even though
10 there were absolutely no current plans by that landowner
11 for future development, that understanding that
12 landowner was going to be transitioning from
13 silviculture into residential, commercial and industrial
14 development, the certificate should be granted.

15 One final quote from that case.

16 **CHAIRMAN ARGENZIANO:** And --

17 **MR. WHARTON:** The Commission noted therein
18 that that was consistent with other large land owning
19 cases and said, "It is not that we find there appears to
20 be a need, although limited, for potable water service
21 in the territory, although it is not known at this time
22 what forms of services are required."

23 Commissioners, we think that we will
24 demonstrate the criteria has been met, that the
25 application is in the public interest, that this is the

1 type of application that you have granted before, and
2 that the fears of local government will not come to
3 fruition if Skyland is certificated.

4 **CHAIRMAN ARGENZIANO:** Thank you. And it'll be
5 noted that we did go above the ten minutes to 18
6 minutes, which will be afforded to everyone that needs
7 it. Okay.

8 Staff?

9 **MS. KLANCKE:** I believe that Hernando County
10 is next.

11 **CHAIRMAN ARGENZIANO:** Okay. Sorry. Let me
12 put my glasses on. Yes.

13 **MR. KIRK:** Actually it's good afternoon.

14 **CHAIRMAN ARGENZIANO:** Afternoon.

15 **MR. KIRK:** On behalf of Hernando County,
16 Hernando County Water and Sewer District and Hernando
17 County Utility Regulatory Authority it's a pleasure to
18 be here, and we will not be using even close to ten
19 minutes.

20 May it please the Commission, you may ask why
21 is Hernando fighting the certification of Skyland's
22 application so vigorously? Because Hernando submits
23 that Skyland's application is a sham and the
24 implementation of that application, if granted, would
25 harm the public in the following ways.

1 First, Hernando does not want to give up one
2 of its most valuable and public important assets, its
3 potable water supply under the ground, to a private
4 investor, Skyland. The prefiled testimony of the
5 representative from the Southwest Water, Southwest
6 Florida Water Management District indicates that
7 Skyland, as they propose to develop residential
8 properties, has more than ample water supply based upon
9 the existing consumptive use permits issued by the
10 Southwest Florida Water Management District for
11 agricultural purposes. However, the prefiled testimony
12 of Skyland indicates the desire to ask for additional
13 consumptive use permits. This clearly is indicative of
14 an intent to either bank water rights and/or export bulk
15 water sales, both of which we do not believe is in the
16 best interest of Hernando County and its citizens.

17 Second, the developer has not and cannot
18 demonstrate need. On the Hernando parcel in Phase 1,
19 which is approximately 362 acres, and this is identified
20 in, I think in Figure D1, the map, that right now
21 Skyland can only put three homes on 362 acres without
22 getting additional developmental rights from Hernando
23 County through the board, through approval by the Board
24 of County Commissioners. We submit that three homes on
25 362 acres does not justify centralized water.

1 Moreover, we note that in the application
2 there's only been two requests for service, demand for
3 service; one by the president of Evans Properties, Inc.,
4 and the second by the vice president of Properties, Inc.
5 Conversely, when the Board of County Commissioners,
6 Hernando County Board of County Commissioners held a
7 public hearing to provide centralized water service to
8 southeastern Hernando County, no one, no one from the
9 public spoke in support that they needed this
10 centralized service, even though the hearing was very
11 well advertised. Strikingly similar to the customer
12 testimony this morning, no one spoke in favor of
13 centralized water, water and wastewater service in this
14 section of Hernando County. We got the same response
15 when this matter came before the Hernando County Board
16 of County Commissioners.

17 Third, it's not in the public interest. And
18 we believe there's four significant ways it's not in the
19 public interest. It's not in the, it's not in the
20 public interest to violate the goals, objectives and
21 policies of the local government to adopt a
22 comprehensive plan. We argue the comprehensive plan
23 under the, under the public interest section of our
24 argument. It is not in the public interest to encourage
25 urban sprawl, which we would submit would happen if you

1 introduced centralized water into a largely undeveloped
2 rural area.

3 Third, it's not in the public interest to
4 establish a water and wastewater utility which we
5 believe is inherently inefficient due to economies of
6 scale serving only so few users.

7 We would further submit it's not in the public
8 interest to export Hernando County's water supply
9 outside of Hernando County.

10 Finally, the evidence will show that Skyland
11 has no water or sewer pipes in the ground which
12 transverse Hernando County and Pasco County. Further,
13 Skyland admits that it has no actual plans to construct
14 such pipes and that such pipes would be constructed in
15 Phase II, sometime after Phase II, but such phases have
16 not been determined at this time.

17 Hernando would submit that the Commission
18 lacks subject matter jurisdiction under Section
19 367.171(7), *Florida Statutes*, and it would appropriate
20 for the Commission to dismiss this case.

21 For all the reasons stated and more
22 particularly set forth in the Prehearing Order as
23 Hernando's position, we respectfully request that
24 Skyland's application be denied or, in the alternative,
25 dismissed. Thank you very much.

1 **CHAIRMAN ARGENZIANO:** Thank you. And I
2 believe next we're at Pasco County.

3 **MR. HOLLIMON:** Thank you, Madam Chair.

4 First, I want to just lay a little bit of
5 background. You know, Pasco County shares a lot of the
6 concerns that Hernando County just expressed about water
7 banking and bulk sales, so I'm not going to go into
8 those. And I also wanted to talk about, a little bit
9 about this process and procedure we're in right now.
10 We're in an evidentiary proceeding and Skyland is the
11 applicant, and therefore Skyland bears the burden of
12 proof in this proceeding. And Skyland bears the burden
13 of not only proving it, but proving, proving all of the
14 elements necessary for them to obtain the certificate,
15 but they have to prove them with competent substantial
16 evidence that's in the record. Okay? So Pasco opposes
17 what Skyland seeks to do. And a proper purpose of an
18 Intervenor is to hold, hold the applicant's feet to the
19 fire to make sure that they actually build the record
20 that contains the competent evidence that's necessary
21 for them to obtain what they're, what they're asking
22 this Commission to do. That's a proper purpose.

23 Now Mr. Wharton talked about the fact that
24 there's so many issues that are uncontested, and there
25 are in fact issues that there is no testimony provided

1 by Intervenor that directly address. However, that
2 doesn't necessarily mean they're uncontested. It may
3 mean that the Intervenor believe that there's not
4 evidence in the record that's competent to satisfy the
5 particular requirement. So don't confuse a lack of
6 testimony from the Intervenor with a stipulation, if you
7 will, to a particular issue.

8 And this is a unique application, I believe.
9 Mr. Wharton again referred to several other large
10 landowner type of certification cases, but this is the
11 checkerboard case. Those others are all based upon a,
12 primarily a large single contiguous piece of property.
13 The evidence is going to show this. This case has
14 parcels that are throughout two counties in a
15 checkerboard fashion. So it's, it's different. And I
16 also believe that your, your, your duty here is to, is
17 to listen to and discern the particular facts and
18 circumstances that are applicable to this application.
19 So all the other applications that have occurred in the
20 past, while they may have some probative value here,
21 they're not determinative because the particular facts
22 at issue in this case are different than the particular
23 acts -- facts that were, that were present in those
24 other cases.

25 So, and so generally Pasco County believes

1 that this application is not in the public interest.
2 And it's really -- I'll give you just a basic way. You
3 know, Skyland's application had to make some assumptions
4 about the type of development that would occur in order
5 for them to do their cost of service study, to determine
6 how much water was going to be needed and how much it
7 was going to cost. And so they made the assumption that
8 they would develop the property based upon the current
9 zoning, the current density, which is roughly one unit
10 per ten acres. Okay? But the unrebutted testimony
11 you'll hear from Pasco County's Utilities Director is
12 that it doesn't even begin to make economic sense to
13 provide central services until you have a density of
14 about two units per acre. Not one per ten, but two per
15 one. Okay? So it's not in the public interest for
16 consumers, who will be the customers of this utility, to
17 pay rates that necessarily have to be far in excess of
18 what they otherwise would be if the densities were
19 present.

20 You will also hear testimony about the, the
21 fact that this utility is not consistent with the
22 comprehensive planning. Again, the comprehensive
23 planning process is, it is imbued with the public
24 interest. And the fact that there is testimony that
25 this utility, the requested utility is not consistent

1 with these comprehensive plans is a factor that says
2 this is not in the public interest.

3 Also, need -- I'm going to -- I want to
4 conclude with talking about need. You know, there's --
5 somehow it seems that the standard for need, there has
6 got to be more than simply a letter from a landowner to
7 itself asking for service. I mean, that's what we have
8 here. And so it just seems that for this Commission to
9 determine there is a need for a utility, there needs to
10 be some demonstration that there is, you know, something
11 there. And what we have -- what you'll see in this
12 record is two letters, one that identifies one house and
13 one barn, and that those two structures are currently
14 served by a well and a septic, there's no problems with
15 that well and septic, but, nonetheless, these two
16 structures demonstrate the need for service. There's no
17 concrete plan for anything other than that.

18 So Pasco believes that simply they haven't
19 demonstrated any, any form of need. Further, that
20 Pasco, the testimony is that Pasco, if in fact there is
21 development or other activity on the property where
22 there is a need, Pasco stands ready to serve it in its
23 part of the county.

24 So just in conclusion, Pasco doesn't believe
25 that the utility will serve the public interest, the

1 requested utility, that there is, that there is a need
2 for this utility, and Pasco finally believes that
3 Skyland is not going to be able to put evidence in the
4 record that's competent that demonstrates that they've
5 met all the requirements in order to obtain the
6 certification.

7 **CHAIRMAN ARGENZIANO:** Thank you.

8 **MS. KLANCKE:** Now the City of Brooksville.

9 **MR. McATEER:** Thank you. Derrill McAteer with
10 the Hogan Law Firm for the City of Brooksville. The
11 prehearing statement clearly indicates the positions of
12 Hernando County with which the City of Brooksville
13 concurs and adopts. We defer to the County's arguments
14 regarding those positions, and the City of Brooksville
15 emphasizes its solidarity with Hernando County in
16 opposing this certificate application. And excuse my
17 laryngitis this morning.

18 Outside of Hernando County's objection, there
19 are a few issues I'd like to note for the record. In
20 August of 2002, the City and Hernando County entered
21 into an interlocal agreement denoting the boundaries of
22 the first right to serve area for potable water services
23 between the two entities. A copy of the interlocal
24 agreement was attached as Exhibit B to the City's
25 amended objection in this case. It is of record.

1 As denoted by an aerial diagram provided by
2 City staff also attached to the amended objection as
3 Exhibit C, at least one of the parcels Skyland proposes
4 to serve is located in Hernando County's first right to
5 serve area less than three miles from the boundary of
6 the City's first right to serve area and the
7 southernmost boundary of the City itself.

8 Under paragraph two of that same interlocal
9 agreement, if Hernando County does not wish to provide
10 services to a developer in its first right to serve
11 area, the City has a right to provide such services if
12 there is, if there is a desire and need of the public in
13 that area. Moreover, only one year's notice by either
14 party is required to terminate the interlocal agreement,
15 in which case the City's first right to serve could be
16 expanded to the limits allowed by Chapter 180, *Florida*
17 *Statutes*.

18 If the City should opt out of the interlocal
19 agreement, two parcels governed by Skyland's application
20 would be within the five-mile buffer zone described in
21 Section 180.02, *Florida Statutes*. If this were to
22 occur, any attempts by Skyland to serve properties
23 within a buffer zone would be an encroachment upon the
24 potential service area of the City of Brooksville under
25 that statutory section. This is apparent by the City of

1 Brooksville's five-mile buffer illustration denoted in
2 the aerial map included in Skyland's application and
3 also included in demonstrative exhibits that I have seen
4 floating around the chamber this morning, which I expect
5 Skyland to use in their presentation throughout today
6 and tomorrow.

7 Some of the common requirements of utilities
8 as noted in the City's verified responses to staff's
9 interrogatories, again also of record, are testing for
10 degree of sewage treatment, testing for water quality
11 and quantity, sufficient redundancy to ensure continuous
12 and uninterrupted water supply and sewage treatment
13 system, fire protection, which would require much larger
14 lines and pressures, providing certified operators and
15 the purchase of parts, supplies and equipment at a
16 reduced rate based on an economy of scale.

17 The City does not believe that Skyland through
18 the proffered testimony or through the body of the
19 application has shown these capabilities. And as an
20 aside, we would agree with Pasco County that Skyland has
21 woefully failed to show a need, and that the procedure
22 by which this certificate has been requested is in
23 itself a farce.

24 There's another reason Skyland's application
25 is not in the best interest of the public of either the

1 City of Brooksville, Hernando County or Pasco County.
2 The City Council of the City of Brooksville has
3 instructed me to inform this Commission of their strong,
4 unanimous objection to bulk water sales being supported
5 via groundwater pumping from the Hernando County sites
6 described in the petition. Skyland explicitly noted its
7 intent to explore bulk water sales in its application
8 for this certificate. It is the fear of the City that
9 opening the Pandora's box of bulk water sales would be a
10 potential threat to the City of Brooksville, City of
11 Brooksville's future potable water supply.

12 According to Section 367.031, *Florida*
13 *Statutes*, Skyland can't be issued a DEP water facility
14 construction permit, a SWFWMD water system consumptive
15 use permit or a SWFWMD well drilling permit until this
16 Commission has approved the certificate of application
17 before them. Also, given the fact that the certificate
18 application expresses the intent to explore bulk water
19 sales, certificate approval would most certainly be
20 inconsistent with the state's local sources first water
21 policy.

22 In conclusion, I respectfully suggest that
23 approval of the certificate for Skyland would result in
24 this Commission giving a stamp of approval to bulk water
25 sales from Hernando County for the benefit of more urban

1 jurisdictions. Such an act would be a setback to this
2 area's continuing struggle to fight for fair ground in
3 the water wars that engulf the Tampa Bay area, Hernando
4 County and the City of Brooksville since the late 1960s.
5 This concludes the opening statement of the City of
6 Brooksville.

7 **CHAIRMAN ARGENZIANO:** Thank you.

8 **MS. KLANCKE:** Office of Public Counsel.

9 **MR. REHWINKEL:** Thank you. Public Counsel. I
10 think I can give back some of Mr. Wharton's time here.

11 Our position in the prehearing statement
12 reflects that we are a neutral Intervenor in this
13 proceeding at this time. We are here under Sections
14 350.061, .061(1) and 367.045. We're here to ask
15 questions of all witnesses about the public interest as
16 it relates to future unrelated customers of this
17 utility.

18 Mr. Hollimon touched on it and Mr. Wharton
19 also said that this is an atypical case and we agree.
20 As far as I know, the Public Counsel has not intervened
21 like this in an original certificate case.

22 And Mr. Wharton also referenced the *ECFS* and
23 *Farmton* cases, which everyone has noted are 350,000 --
24 300,000-acre plus monolithic properties. As you can see
25 from the demonstrative exhibit back here that

1 Mr. Hollimon has referred to as a checkerboard case, it
2 is different on its face and that is why we are here at
3 this time. We don't know whether that difference is
4 meaningful or not, and we would propose to explore that
5 at the hearing as it relates to the costs that future
6 unrelated customers would bear.

7 Our interest is also fueled based on history.
8 This area of the state is an area where private
9 utilities have provided services with service quality,
10 water quality and financial resource deficiencies that
11 have occurred once the original developer or owner
12 departs the scene. We, the Public Service Commission,
13 the customers are all left to pick up the pieces of
14 unrealistic provision of utility services when they have
15 invested life savings in homes and residences and
16 businesses that are dependent upon those services. It
17 is for this reason that we want to ask questions of the
18 witnesses and explore and test what is put forward in
19 this case. We have taken this tentative step to
20 intervene to ask about where the public interest lies
21 about our clients, these future unrelated customers. At
22 the end of the day we may have no objection or we may
23 make a recommendation to the Commission as to the public
24 interest as the facts and law support. Thank you.

25 **CHAIRMAN ARGENZIANO:** Thank you. Are we ready

1 for testimony?

2 **MS. KLANCKE:** Just a few little minor things.

3 **CHAIRMAN ARGENZIANO:** Okay.

4 **MS. KLANCKE:** First of all, staff, as staff
5 mentioned in the preliminary matters, staff has
6 identified the exhibit list as hearing Exhibit Number 1,
7 and at this time we would like to have that moved into
8 the record.

9 **CHAIRMAN ARGENZIANO:** Okay. Without
10 objection, it's moved into the record.

11 **MR. KIRK:** No objection from Hernando.

12 **CHAIRMAN ARGENZIANO:** I'm sorry?

13 **MR. KIRK:** No objection.

14 **MR. HOLLIMON:** No objection.

15 **CHAIRMAN ARGENZIANO:** Without objection, I
16 don't hear any, moved into the record.

17 (Exhibit 1 marked for identification and
18 admitted into the record.)

19 **MS. KLANCKE:** Excellent. And perhaps at this
20 time OPC would like to deal with Exhibit Number 41 from
21 the first service hearing.

22 **MR. REHWINKEL:** Yes. On behalf of the public
23 witnesses, the Office of Public Counsel moves
24 Exhibit 41 that was offered by Witness Radacky.

25 **CHAIRMAN ARGENZIANO:** Any objections?

1 **MR. KIRK:** No objection.

2 **CHAIRMAN ARGENZIANO:** Hearing none, it's moved
3 into the record..

4 (Exhibit 41 admitted into the record.)

5 **COMMISSIONER EDGAR:** Do we have copies? Do we
6 have copies available?

7 **MS. KLANCKE:** I believe so.

8 **COMMISSIONER EDGAR:** Okay. At some point I
9 would like a copy. Thank you.

10 **MS. KLANCKE:** Absolutely. In addition, I'd
11 like to state before we move, you know, before we have
12 any of the witnesses come up, summaries are limited to
13 five minutes. And we, because of the unique nature of
14 the circumstances, because surrebuttal was filed in this
15 case on the 2nd of July, it was not able to be
16 incorporated into the Prehearing Order. Thus, we will
17 follow the witnesses as provided and in the order
18 specified in the prehearing order through rebuttal
19 testimony; whereupon, we will raise the three
20 surrebuttal witnesses proffered by the counties
21 beginning with Hernando County's surrebuttal witnesses
22 and moving on to Pasco County's surrebuttal witnesses.

23 **CHAIRMAN ARGENZIANO:** Okay. And as we
24 mentioned before, I believe all the witnesses have
25 already been sworn.

1 Commissioner Skop.

2 **COMMISSIONER SKOP:** Thank you, Madam Chair.

3 Is it possible at some point when we get into
4 the witness testimony to at least have the
5 demonstratives where I can see them to kind of see
6 what's going on? Because, again, it's two counties,
7 multiple parcels.

8 **MR. DETERDING:** Commissioner Skop, we
9 identified these exhibits, as you'll recall, at the
10 Prehearing Conference and provided all of the parties a
11 copy of the two demonstratives we intended to utilize.
12 Through the generosity of a couple of the parties, we
13 were able to obtain a couple of those back so that we
14 can hand them to the Commissioners. They're going to be
15 over here and I'm going to have Mr. Hartman identify
16 them briefly as to what they depict. But I am going to
17 provide you with copies for y'all to be able to see more
18 clearly.

19 **MS. KLANCKE:** If it, if there are no
20 objections to the use of Map 3A, staff has also made
21 small copies of that map. It's purely for demonstrative
22 purposes and merely contains portions of the
23 application.

24 **CHAIRMAN ARGENZIANO:** Has everyone seen Map
25 3A?

1 **MS. KLANCKE:** That's it. If, if that would
2 add clarity to the record, it's something that staff
3 felt was helpful for our purposes. And if there are no
4 objections for using that --

5 **CHAIRMAN ARGENZIANO:** How about we get a copy
6 out to everybody and make sure first.

7 **MS. KLANCKE:** We have copies for everyone.

8 **MR. KIRK:** Hernando has no objection to Map 3A
9 as promulgated by staff. We, at the appropriate time,
10 we do have objections as to other demonstrative
11 exhibits.

12 **CHAIRMAN ARGENZIANO:** Okay.

13 **MR. McATEER:** The City of Brooksville has no
14 objection to Map 3A. It does, as we noted in our
15 opening, demonstrate at least a portion of the
16 Brooksville five-mile buffer.

17 **MR. HOLLIMON:** Just one, one question, Madam
18 Chair.

19 **CHAIRMAN ARGENZIANO:** Yes. Uh-huh.

20 **MR. HOLLIMON:** This 3A is from, taken from the
21 exhibit that Hartman is, is sponsoring; is that correct?

22 **MS. KLANCKE:** That is correct.

23 **MR. HOLLIMON:** Okay.

24 **MS. KLANCKE:** We are not planning -- staff
25 does not intend, for clarification, to move this into

1 the record. We merely would like to use it for
2 demonstrative purposes.

3 **CHAIRMAN ARGENZIANO:** Does everybody have
4 their copies? Any objections?

5 **MS. KLANCKE:** I believe that with that staff
6 is not aware of any other additional matters before we
7 call the first witness.

8 **CHAIRMAN ARGENZIANO:** Okay. Then let's move
9 into testimony. We're going in the order that appear in
10 the Prehearing Order. I'm sorry. It would be Skyland
11 then?

12 **MS. KLANCKE:** That is correct. Witness
13 Hartman.

14 **MR. DETERDING:** Yes. Skyland would like to
15 call Gerald C. Hartman.

16 **GERALD C. HARTMAN**

17 was called as a witness on behalf of Skyland Utilities,
18 LLC, and, having been duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. DETERDING:**

21 **Q.** Mr. Hartman, have you been sworn?

22 **A.** Yes, I have.

23 **Q.** Please state your name and employment address.

24 **A.** Gerald Charles Hartman, 301 East Pine Street,
25 Suite 520, Orlando, Florida, 30 -- 32 -- 32801.

1 **Q.** Have you been retained by Skyland Utilities,
2 LLC, to provide testimony and expert opinions in this
3 proceeding?

4 **A.** Yes, I have.

5 **Q.** Did you prepare, in conjunction with my
6 office, a document referred to as the prefiled direct
7 testimony of Gerald C. Hartman consisting of six
8 numbered pages plus a cover sheet?

9 **A.** Yes, I did.

10 **Q.** If I asked you those same questions here
11 today, would your answers be the same?

12 **A.** Yes, they would be.

13 **Q.** Do you have any corrections to make to that
14 testimony?

15 **A.** The testimony refers also to -- there's no
16 corrections to the testimony, but the testimony also
17 refers to the application, which is this full
18 application, and later on I think we might want to talk
19 about a lease situation.

20 **Q.** Okay. We'll, we'll get to the exhibits in a
21 moment.

22 Did you cause to be prepared and assembled
23 certain exhibits which were prefiled with that direct
24 testimony?

25 **A.** Yes.

1 Q. They were labeled GCH-1, GCH-2 and GCH-3;
2 correct?

3 A. That's correct.

4 Q. Do you have any corrections to those exhibits?

5 A. No corrections, simply a potential offer of a
6 modification to, to the lease.

7 Q. To the lease?

8 A. The form of the lease.

9 Q. Okay. If you could explain that briefly.

10 A. The form of the lease included in the
11 application was for a 20-year period, which is similar
12 to what's been accepted in the Plum Creek Timber Company
13 cases, B and C Utilities and D and E Utilities. The --
14 Evans and Skyland have agreed that they would provide
15 for automatic renewals on a five-year basis such that
16 there's no question about the control of the, or the
17 ability to have the land to accomplish and perfect the
18 aspects of this company and this application.

19 Also, at the appropriate time, the blank for
20 the filling in of the person which is the resource
21 manager would be made, and that also in the lease there
22 will be a statement that Skyland and Evans would, their
23 intent would be to be co-permittees on water use permits
24 such that agricultural operations and the public utility
25 operations can continue, and that CIAC, of course, would

1 be accepted. And legals, once the specific parcels are
2 delineated, would be attached.

3 Q. Are you also sponsoring the financial
4 statement of Evans Properties identified as Confidential
5 Document Number 11472-09 filed in response to a staff
6 inquiry on 11/29/09?

7 A. Yes, as their agent and consultant.

8 Q. Okay.

9 A. With Ron Edwards available to do detailed
10 testimony relative to that financial statement since he
11 is the CEO and president.

12 Q. I want to ask you before we get to the summary
13 and inserting the testimony in the record, I want to ask
14 you to identify the two demonstratives and briefly
15 describe what they depict.

16 A. Surely. If I may, Madam Chairman.

17 **CHAIRMAN ARGENZIANO:** Yes, please.

18 **THE WITNESS:** The first demonstrative shows
19 the parcels in two different colors. Blue is in
20 Hernando County, which constitutes 788 acres, yellow is
21 within Pasco County, which constitutes 3,301 acres,
22 totaling about 4,000 acres, 4,100 acres under this
23 application. And this exhibit shows where the county
24 line goes through and sort of bisects these properties.
25 And clearly shown on this parcel, that the parcel is

1 bisected between two different counties and, therefore,
2 service would be ultimately provided across county
3 lines, and, and it's pretty clear that the counties
4 bisect these properties. And because of that,
5 heretofore such applications were under the purview of
6 the Commission when they transcend two counties.

7 The second demonstrative, if I may approach.

8 **CHAIRMAN ARGENZIANO:** Yes, you may.

9 **THE WITNESS:** Depicts a plan for utility
10 service and also depicts the service areas. Again, as
11 the Brooksville counsel delineated, this is a five-mile,
12 the maximum planning area. And notice that it was
13 referenced as a service area. That's provisioned -- I
14 worked in the utility settlement for, a State
15 Comprehensive Plans Policy Advisory Committee member,
16 and the five-mile extension is a reserve area, it's a
17 planning area, not necessarily where facilities are
18 located. We've testified in, in this that of course
19 there are no existing utility systems, no existing
20 facilities on these parcels by the other parties. Over
21 here you can see where Hernando County's systems are.
22 And here is Pasco County to give you a feel for it.

23 **MR. KIRK:** May we seem them?

24 **THE WITNESS:** Sure.

25 **MR. KIRK:** Madam Chairperson, Hernando County

1 would object to this demonstrative to the extent, not as
2 it depicts Skyland's properties, but there's references
3 on it to proposed contaminated wells. Mr. Hartman,
4 during his prefiled testimony deposition, gave no
5 indication that his firm studied or surveyed the area as
6 to contaminated wells. And unless they have somebody
7 from the Florida Department of Environmental Protection
8 or the Department of Health, we would object to this
9 demonstrative because we have no way of verifying,
10 authenticating what he is purporting as the location of
11 so-called contaminated wells.

12 **MR. DETERDING:** The information as outlined on
13 there was obtained from the Department of Environmental
14 Protection on a map and in written description. If need
15 be, we can provide the original information that we
16 obtained from DEP. The purpose of that is simply to
17 show that there are issues with water quality in the
18 area, substantial issues with water quality.

19 **MR. McATEER:** The City of Brooksville, I
20 wasn't going to say anything about this, but the City of
21 Brooksville would have to join in the County's objection
22 because if there was source information from DEP that
23 contributed to that construction of that demonstrative
24 exhibit, why is it not in the record?

25 **MR. DETERDING:** Well, and to the extent that

1 we have even discussed the contaminated wells, it is in
2 the rebuttal testimony, not in his direct. So if
3 there's some objection to his information that
4 Mr. Hartman has concerning these contaminated wells, it
5 seems to me that the appropriate time to address that is
6 not in relation to this demonstrative unless he gets
7 into it in his direct, which I do not believe he is
8 intending to do.

9 **MS. CIBULA:** I think it's outside his prefiled
10 testimony and shouldn't be allowed.

11 **CHAIRMAN ARGENZIANO:** Any comments from
12 Commissioners? Hearing none, well, I won't allow it.

13 **MR. DETERDING:** So if I understand the ruling
14 correctly, it is --

15 **CHAIRMAN ARGENZIANO:** Outside of his
16 testimony.

17 **MR. DETERDING:** That exhibit, that
18 demonstrative?

19 **CHAIRMAN ARGENZIANO:** That particular one.

20 **MR. DETERDING:** Outside his direct testimony.

21 **CHAIRMAN ARGENZIANO:** Yes. That's what I --

22 **MR. DETERDING:** Okay. Then we won't utilize
23 that for the time being.

24 **CHAIRMAN ARGENZIANO:** Yes. Please continue.

25 **BY MR. DETERDING:**

1 Q. Mr. Hartman, could you please provide a brief
2 summary of your direct testimony, recognizing that the
3 Prehearing Order limits you to five minutes.

4 A. Thank you. Yes. I'm sponsoring as an agent
5 and consultant for, you know, for the company the
6 complete application of Skyland Utilities, LLC, to the
7 FPSC for service to the public of central potable,
8 non-potable and wastewater services.

9 The property within the proposed service area
10 is fully owned by Evans and constitutes some 788 acres
11 in Hernando, 3,301 acres in Pasco County, as shown in
12 this exhibit, which is similar to Figure 3A of the
13 application which staff has provided.

14 Generally, the area, as shown on the next
15 demonstrative -- I won't talk about that. But it also
16 shows on the exhibits where the other utilities are
17 shown and clearly shows that no existing facilities are
18 within the properties of Evans Properties or Skyland
19 Utilities' service area.

20 Central water and wastewater systems provide
21 the highest level of environmental protection and
22 licensed professional operators. The existing Evans
23 wells will have conventional water treatment, and I'll
24 cut out the part about the arsenic issues. The
25 wastewater treatment was planned to be an MLE process in

1 a small facility and also in treatment septic tanks. It
2 is an advanced secondary treatment with partial
3 denitrification for nutrient removal. Skyland has the
4 technical and financial capabilities for services.

5 The Phase 1 program over some six years is
6 anticipated to have 155 ERCs, and through the Phase 5
7 process is 600 ERCs. Both are greater than the
8 100 person FPSC threshold. The utility will serve the
9 public in both Hernando and Pasco Counties, and
10 heretofore such circumstances have been found under the
11 FPSC jurisdiction.

12 The submitted application with Exhibits A
13 through B address the areas required for certification
14 supplemented by Appendices 1 through 10. The exhibits
15 to the application I believe can be read by everyone.
16 But if you would like me to, I can go through them very
17 quickly. But it covers the need for service through the
18 tariff and all the affidavits. So all the normal
19 criterion that's been provided historically by myself to
20 the Commission for various other clients are shown
21 similarly here.

22 In the appendices we have supplemental
23 information that attaches to the need, attaches to the
24 comprehensive plan research, schematics of facilities,
25 the water lease that I talked about, wastewater leases,

1 schematics of wastewater facilities and funding
2 agreements, cost of study, a cost study and rate design
3 and proposed service territory, legal description and
4 map. I don't think the legal description and maps are a
5 dispute in this matter, as well as the water and
6 wastewater tariffs complete as we normally provide in
7 these, in these matters.

8 As an example, the proposed rates for one ERC
9 of service are water, \$18.09 per month, \$5.77 per 1,000
10 gallons; wastewater, \$16.57 per month, \$5.13 per 1,000
11 gallons. For 5,000 gallons, which would be the typical
12 customer, the combined water and wastewater bill is
13 proposed at \$89.16 per 1,000 gallons.

14 Cost recovery is approximately 23 percent in
15 the base fee and approximately 77 percent in the
16 consumptive cost as a conservation, as a conservation
17 pricing measure. We have provided here considerations
18 that you would have the pricing indices to conserve
19 water and conserve use, and then also you can control
20 your bill that way.

21 The service availability cost for water, which
22 is 350 gallons per day, is \$2,889.57, for wastewater is
23 \$2,399.35 and that's for 270 gallons per day. The
24 combined total for one ERC is \$5,288.92.

25 I've testified before and been accepted by the

1 Florida Public Service Commission historically in the
2 same fashion as in this application on behalf of Farnton
3 Water Resources, East Central Florida Services, and
4 additionally the applications for B and C, D and E and
5 many other times. My background is I have undergraduate
6 and graduate degrees both from Duke University. I'm a
7 Registered Professional Engineer. I'm known as a
8 utility management consultant, do rates and charges,
9 impact fees, bond issues, et cetera, and I'm an
10 accredited senior appraiser of public utilities with a
11 specialty in water and wastewater utility systems.

12 Supporting my direct testimony are Exhibits 1,
13 2 and 3. And in conclusion, I believe the application
14 and associated documents meet the requirements for
15 regulation by the Florida Public Service Commission, the
16 authority, the service and the rates.

17 **CHAIRMAN ARGENZIANO:** Thank you.

18 **MR. DETERDING:** Commissioner, I'd request that
19 the direct testimony of Gerald C. Hartman be inserted
20 into the record as though read.

21 **CHAIRMAN ARGENZIANO:** The testimony shall be
22 inserted into the record.

23 **MR. DETERDING:** And that his exhibits, GCH-1,
24 2 and 3, and the Confidential Document Number 11472-09,
25 which is on staff's list as Number 14, be identified.

1 **MS. KLANCKE:** For the clarity of the record,
2 these have already been identified as Numbers 2, 3 and 4
3 and Number 14.

4 **CHAIRMAN ARGENZIANO:** And 14. They are
5 already identified in the record. Okay.

6 (Exhibits 2, 3, 4 and 14 marked for
7 identification.)

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1 Q. State your name and address.

2 A. Gerald Charles Hartman, P.E., BCEE, ASA, GAI Consultants, Inc., 301
3 E. Pine Street, Suite 1020, Orlando, Florida 32801.

4 Q. Mr. Hartman, are you a registered professional engineer in the State
5 of Florida?

6 A. Yes. My registration number is 27703.

7 Q. Mr. Hartman, do you possess additional certifications?

8 A. Yes, I am also an Accredited Senior Appraiser specializing in
9 utilities, certification number 7542.

10 Q. Mr. Hartman, what is your area of specialty at GAI Consultants,
11 Inc.?

12 A. I specialize primarily in water and wastewater utility matters.

13 Q. Do you have a designation beyond your professional engineer's
14 license and appraiser certification?

15 A. Yes. I am a Board Certified Environmental Engineer in the American
16 Academy of Environmental Engineers with the water and wastewater specialty
17 designation.

18 Q. Have you been accepted by the Florida Public Service Commission to
19 render testimony concerning utility management, rate setting and
20 engineering on original water certificates and/or service area
21 modifications?

22 A. Yes, I have on a few occasions over the past 25+ years.

23 Q. In what areas are you going to provide testimony in this matter?

24 A. In utility management, rate setting, engineering, financial and
25 technical ability and need for service associated with the application of

1 Skyland Utilities, LLC, and for the Florida Public Service Commission
2 original water and wastewater certificate.

3 Q. Was the application for certification and supporting exhibits and
4 appendices prepared by your firm?

5 A. Yes, our firm prepared the engineering, accounting, and utility
6 management aspects of the application on behalf of our client, Skyland
7 Utilities, LLC.

8 Q. Was the application submitted to the Public Service Commission with
9 the associated supporting exhibits and appendices on record at the
10 Commission?

11 A. Yes, and with the Exhibit GCH-1 to this Direct Testimony, which
12 includes the original application, supporting exhibits and appendices and
13 the associated maps concerning the original water and wastewater
14 certificates for Skyland Utilities, LLC.

15 Q. Are the matters contained in the application and supporting
16 documentation true, accurate and/or an appropriate representation to the
17 Florida Public Service Commission in your opinion?

18 A. Yes, they are.

19 Q. Based upon your review of the application and associated documents,
20 do you believe that such documents meet the requirements for regulation by
21 the Florida Public Service Commission?

22 A. Yes, they do. The territory proposed for service by the applicant,
23 Skyland Utilities, LLC, has a need for such services delineated in the
24 application. These include potable and non-potable water and wastewater
25 services to bulk exempt, bulk non-exempt, intensified agribusiness,

DIRECT TESTIMONY OF GERALD C. HARTMAN, P.E., BCEE, ASA

1 residential and general service customers. A service request letter from
 2 Mr. J. Emmett Evans III, Vice President of Evans Properties, Inc., is
 3 contained in Appendix I. Mr. Ron Edwards, President of Evans Properties,
 4 has also included a letter supporting the application with a more general
 5 request for service. Evans Properties, Inc. owns all of the land within
 6 Skyland's proposed service territory. The near term need for water and
 7 wastewater services for Skyland are several existing properties,
 8 intensified agribusiness and the first phase of development as detailed in
 9 Exhibits D and F and Appendix I of the application. It is anticipated
 10 that development will occur in five (5) separate phases as outlined in
 11 Appendix I. Because Skyland's proposed service territory traverses county
 12 boundaries, the Florida Public Service Commission should be the entity to
 13 grant the requested water and wastewater certificates.

14 Q. Will the certification of Skyland Utilities, LLC, be in competition
 15 or a duplication of any other system?

16 A. No other system serves the proposed service territory or is in as
 17 good a position to provide such services as and when needed. All property
 18 within the proposed service territory is owned by Evans Properties, Inc.
 19 and is currently involved in agribusiness operations.

20 Q. Have you had occasion to review the utility service areas in this
 21 region?

22 A. Yes, I am familiar with the Hernando County, Pasco County, City of
 23 Brooksville and Dade City's service areas.

24
 25

DIRECT TESTIMONY OF GERALD C. HARTMAN, P.E., BCBE, ASA

1 Q. Is it a conclusion of your review of the existing service areas in
2 the region that the Skyland utility system will not be in competition or
3 duplication of any other system?

4 A. Yes, that is my utility management engineering opinion.

5 Q. Does Skyland have the technical ability to serve the requested
6 territory?

7 A. Yes, as provided in Exhibit I of the application. Skyland
8 Utilities, LLC is a wholly owned subsidiary of Evans Utilities Company,
9 Inc. which is a wholly owned subsidiary of Evans Properties, Inc. Evans
10 Properties, Inc. is a private company and has been in the agribusiness
11 industry for over 50 years in Florida. Evans Properties, Inc. has vast
12 experience in water management through its agricultural oversight and has
13 been a leader in water conservation measures and innovative resource
14 management techniques for use of non-potable water. Evans Properties,
15 Inc. has won awards and recognition for their environmental stewardship.

16 Q. Does Skyland have the financial ability to effectively implement and
17 manage a utility system?

18 A. Yes, as provided in Exhibit I of the application. As an affiliate
19 of Evans Properties, Inc., Skyland has the financial backing to be a
20 successful utility. Evans Properties, Inc. is a significant land-owner in
21 Florida and has been in the agribusiness industry for over 50 years. They
22 have agreed to provide funding to Skyland. A copy of the funding
23 agreement between Skyland and Evans can be found in Appendix VII of the
24 application.

25

DIRECT TESTIMONY OF GERALD C. HARTMAN, P.E., BCEE, ASA

1 Q. Does Skyland have an adequate water supply to provide utility
2 service in the proposed service territory?

3 A. Yes. Evans Properties, Inc. has existing wells that they will
4 transfer to Skyland which will provide an adequate supply of water.

5 Q. Does Skyland plan on implementing sufficient water and wastewater
6 capacity to serve the requested territory?

7 A. Yes. We have included descriptions and a conceptual layout of the
8 facilities needed to serve Skyland's anticipated customers. These can be
9 found in Exhibits C, D and F and Appendix III and V of the application.

10 Q. Does Skyland have continued use of the land upon which the utility
11 facilities are or will be located?

12 A. Yes, as provided in the application and supporting documents.
13 Appendix IV and Appendix VI of the application contain lease agreements
14 between Evans Properties, Inc. and Skyland giving them a long-term lease
15 on the land where water/wastewater facilities will be located.

16 Q. Is the rate setting analysis presented in Exhibit GCH-1?

17 A. Yes, Appendix VII of the application contains the cost of service
18 study.

19 Q. What types of rates and charges are you proposing for Skyland?

20 A. We are proposing a potable water rate, wastewater rate, plant
21 capacity charge and some standard miscellaneous service charges.

22 Q. How were costs established in the cost of service study?

23 A. We conceptually designed water and wastewater facilities (plant and
24 line) that would be necessary to serve the ERC equivalent of development
25 within the proposed service territory assuming adherence to the

DIRECT TESTIMONY OF GERALD C. HARTMAN, P.E., BCEE, ASA

1 appropriate county's comprehensive plan density restrictions. We phased
2 the addition of ERCs over five (5) phases with costs calculated for Phase
3 I and reaching an 80% capacity for Phase I, and thus a test year, in year
4 six (6). Capital and operation and maintenance costs were calculated for
5 the development of the system and anticipated flows for the test year.

6 Q. What is the appropriate return on equity for Skyland?

7 A. On December 31, 2008, the Public Service Commission issued Order No.
8 PSC-08-0846-FOF-WS reestablishing an authorized range of return on common
9 equity for water and wastewater utilities, which I have included as
10 Exhibit GCH-2. This leverage formula was used as the basis for the rate
11 of return on equity for Skyland. On June 19, 2009, the PSC issued order
12 number PSC-09-0430-PAA-WS establishing the authorized range of returns
13 which we used for Skyland. That order is also included in Exhibit GCH-2.

14 Q. Are you expecting to provide rebuttal testimony?

15 A. To the extent that it is needed, Yes.

16 Q. Do you have a resume?

17 A. Yes, that is attached as Exhibit GCH-3.

18 Q. Does this conclude your Direct Testimony?

19 A. Yes.

20

21 End of Testimony.

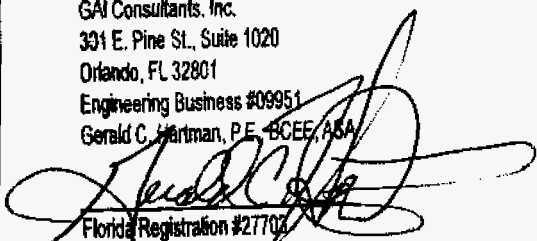
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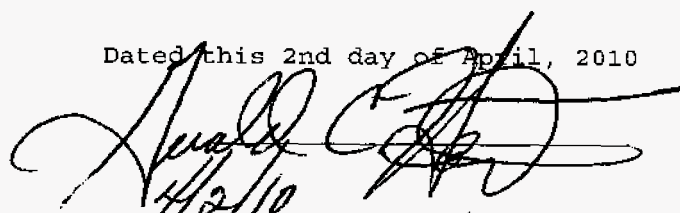
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Gerald C. Hartman, P.E., BCEE, ASA



Florida Registration #27703

Dated this 2nd day of April, 2010



4/2/10
Gerald C. Hartman, P.E., BCEE,
Vice President, ASA.
Fl. P.E. #27703

1 **MR. DETERDING:** We tender the witness for
2 cross.

3 **CHAIRMAN ARGENZIANO:** You're up.

4 **CROSS EXAMINATION**

5 **BY MR. KIRK:**

6 **Q.** Good afternoon, Mr. Hartman.

7 **A.** Good afternoon.

8 **Q.** Sticking to, going to your application, just
9 dealing with the first four exhibits, A, B, C and D,
10 these are documents you prepared?

11 **A.** Regarding Exhibits A, B, C and D?

12 **Q.** Yes.

13 **A.** Yes.

14 **Q.** Well, referring to Exhibit D, you indicated
15 that as part of Phase 1 of Skyland you're proposing 155
16 ERCs over an approximately six-year period?

17 **A.** That's correct.

18 **Q.** Okay. And looking at Exhibit D, it indicates
19 that Phases 2 through 5 have not been conceptually
20 designed at this time, and therefore the ERCs and
21 gallons per day shown are for the maximum allowable by
22 the future land use element density. Would you say
23 that's still an accurate statement?

24 **A.** Generally, yes.

25 **Q.** In what way isn't that general?

1 **A.** Well, I can't predict how the land use may
2 change over time.

3 **Q.** But there has not been any actual drawings or
4 designs for Phases 2, 3, 4 and 5 at this time.

5 **A.** That's correct. It would be premature to go
6 ahead and have all that conducted.

7 **Q.** And currently Skyland has no infrastructure in
8 the ground as we sit here today.

9 **A.** Well, that's correct. It's the initial
10 certificate. It hasn't been certificated yet, so there
11 are no facilities.

12 **Q.** Okay. Referring to Exhibit C, the second page
13 of Exhibit C on the last sentence, you indicate physical
14 interconnections will occur that transverse county lines
15 during future phases. What do you mean?

16 **A.** As, as stated, we have one parcel that's split
17 through the county lines, as I showed before in the
18 exhibit that was accepted. And between those two
19 parcels, as, as service continues, there will be lines
20 across, on that parcel there will be lines crossing
21 county lines.

22 **Q.** And transverse, you mean like physical pipes
23 in the ground?

24 **A.** Yes.

25 **Q.** Looking at Exhibit D, can you tell which

1 parcels are part of Phase 1? And you can refer back to
2 Exhibit 3, 3A.

3 A. I believe everybody has this. This is the
4 large scale. I think everyone has the small scale of
5 the same thing. And what we had selected for Phase 1
6 involved about 1,341 acres, and it's all shown in green
7 on this exhibit.

8 Q. And what parcel or parcels are within Hernando
9 County as to Phase 1?

10 A. It has ID 2 is the only one.

11 Q. And how many acres is ID 2?

12 A. 349 acres.

13 Q. And in your opinion, how many -- based upon
14 one home per every ten acres, that would be
15 approximately how many ERCs?

16 A. Thirty-five.

17 Q. In your professional opinion, 35 ERCs over
18 349 acres can support centralized service?

19 A. Yes. And has been proven to do so in the
20 state.

21 Q. Hypothetically on the 349 acres, if you could
22 only put three homes on that piece of property, would
23 that support centralized sewer, water and sewer?

24 A. Three homes, and that is --

25 Q. Total.

1 **A.** Total?

2 **Q.** Yes.

3 **A.** Well, I've seen centralized water and sewer
4 provided for two in Smyrna Villas in Marion County, but
5 that was not taken into account at three units for our
6 rate study. No.

7 **Q.** In preparing the application, did you take
8 into consideration Hernando County's laws regarding
9 subdividing property?

10 **A.** We looked at the comprehensive plan and I did
11 look at that. I didn't see that restriction on that
12 property.

13 **Q.** You did not -- you looked at the comprehensive
14 plan, but you did not look at Hernando County's laws
15 regarding subdividing? I did not see any reference in
16 the application.

17 **A.** We have, we have some information on
18 subdividing land in Hernando County and Pasco County.
19 But this map is a planning map and was delineated based
20 upon the comprehensive plan.

21 **MR. KIRK:** Hernando County has nothing further
22 at this time.

23 **CHAIRMAN ARGENZIANO:** Okay. Thank you. Next
24 up we have Pasco County, I believe. Pasco County.

25 **MR. HOLLIMON:** Thank you.

CROSS EXAMINATION

1
2 **BY MR. HOLLIMON:**

3 Q. Good afternoon, Mr. Hartman.

4 A. Good afternoon.

5 Q. When you started your testimony, you began by
6 discussing, I believe, some amendments to exhibits to
7 the application; is that correct?

8 A. We're offering the modifications to the lease.
9 The company has decided that they would offer automatic
10 renewals, which were not shown in the original lease
11 document, to take away any concern relative to the land
12 being used for utility purposes as necessary to perfect
13 this application.

14 Q. Is there a document that reflects the
15 modifications you've described?

16 A. That would be a late-filed exhibit provided --
17 I was just authorized to state that we're willing to
18 make that offer relative to the lease.

19 Q. And have you seen any such document?

20 A. It's in the process of being drafted.

21 Q. So to your knowledge, there is no such
22 document as you, as you sit here right now?

23 A. Well, I don't know whether there is or is not
24 a document as, as I sit here right now. I do not know,
25 due to travel, et cetera, if it's been e-mailed to me or

1 provided to me that I, that I haven't seen it. I have
2 discussed the matter with the owner of the property as
3 well as the president of the company.

4 Q. Okay. And I want to make sure I understand
5 exactly what it is that you've been authorized to
6 represent to this Commission with respect to changes or
7 modifications to any lease agreements. Let's start with
8 the water lease agreement. All right? And I want you
9 to detail for me and tell me every change that you
10 understand is going to be made in the future to this, to
11 the water lease agreement.

12 A. There's going to be a provision to allow for
13 in the term, a provision to allow for automatic renewals
14 five years in duration each such that there's not a
15 concern relative to the property. There is going to be
16 a provision delineating under the water one a
17 co-permittee intent such that the utility and irrigation
18 operations initially can co-exist relative to those
19 issues. And there's going to be -- there's a blank on
20 the present document where you fill in the resource
21 manager. Once that person is identified, that, that
22 blank will be filled in. And the lease does not
23 delineate the acceptance of CIAC pursuant to the
24 Commission aspects, and that sentence will be put in.
25 And then once the parcels have been solidified with the

1 need, a legal description would be attached for the
2 final design.

3 Q. Okay. So right now on the water lease
4 agreement there's no legal description associated with
5 that, with that document.

6 A. That's correct. There's no legal description
7 attached to the lease that has been submitted in the
8 original application. There have been maps and
9 schematics delineated for the facilities.

10 Q. And for the water lease agreement, have there
11 been modifications that you're authorized to represent
12 to this Commission today?

13 A. Well, that's what I just said.

14 Q. I'm sorry. The wastewater lease agreement.

15 A. The wastewater lease agreement, it's basically
16 just three. It would be the automatic renewals, the
17 CIAC to be accepted, and the legal description aspects.
18 Pretty straightforward.

19 Q. So for the wastewater lease agreement, again,
20 there's no legal description currently -- in the record
21 currently as it sits today, there's no legal description
22 attached.

23 A. That's correct. There's schematics shown in
24 the application as well as maps showing the general
25 location, but the specificity under final design have

1 not been provided.

2 Q. I believe that you said that you are acting as
3 an agent and consultant to Skyland; is that correct?

4 A. Yes. That's, that's my understanding.

5 Q. Can you look at your --

6 A. I think historically I've also been accepted
7 as an expert witness.

8 Q. There's no question pending. Is that
9 important here?

10 **CHAIRMAN ARGENZIANO:** Let's move on.

11 **BY MR. HOLLIMON:**

12 Q. Can you look at the 3A exhibit, please?

13 A. Yes. Go ahead.

14 Q. Let me just -- I have a couple more about the
15 lease agreements we've been discussing. I just want to
16 make sure, you didn't draft either one of those
17 agreements, did you?

18 A. No, I did not draft them. I did provide
19 examples of previously approved lease agreements based
20 upon my experience with the Commission to the attorneys.
21 The attorneys are responsible for actually drafting the
22 document.

23 Q. Right. And you're not --

24 A. I sat in the meetings discussing the
25 documents, but I did not negotiate the documents. The

1 document is basically between the two parties, Skyland
2 and the, and the owner. I did provide consulting
3 assistance and input to the documents, but I did not
4 negotiate the document and I did not draft the final
5 document. That was a lawyer that did that.

6 Q. Okay. And so you were provided the document
7 by a third party and then you put it in the application;
8 is that correct?

9 A. Well, after, after providing forms of the
10 lease to the attorneys, discussed it in meetings, and
11 then when it was finalized it was given to me to put in
12 the application. Yes.

13 Q. And the application also contains two letters
14 you relied upon to determine a need for service exists;
15 isn't that true?

16 A. There's two letters at the time of, in October
17 relative to the need when the application was submitted,
18 and both of those are shown in the, in the application
19 itself.

20 Q. And you're not the author of either one of
21 those letters, are you?

22 A. No, I'm not. I'm not the customer requesting
23 need and I'm not of the -- or I'm not the landowner
24 wanting to provide service to the property. I'm, I'm an
25 agent for the owner and a consultant, so of course I did

1 not do that.

2 Q. And somebody provided you those letters for
3 inclusion in the application; is that correct?

4 A. Yes. I said that such letters are necessary
5 and that we discussed what those things could be. And
6 then they were prepared by -- and the responsible
7 parties are those signatories of those letters, not
8 myself.

9 Q. But you don't even know how you got a copy of
10 that letter, do you?

11 A. Not -- I don't have -- you asked me in my
12 deposition what the chain of custody for those letters
13 were, and I said I did not have a chain of custody for
14 the letters. No.

15 Q. Isn't it true in your deposition you said that
16 you don't know how you came into possession of those
17 letters?

18 A. Well, in another portion you asked me, give me
19 specifically exactly how the letter got there to you,
20 and I said I don't know exactly how I had received the
21 letters. But I know, I know the signatures of the
22 parties. I've seen other documents signed by those,
23 both those individuals. They sure look the same. I'm
24 not a writing expert. It's on their letterhead, and the
25 originals were provided to our, our offices and we

1 provided those to the Commission.

2 Q. You have, you should have in the application
3 -- can you reference the letters, the need letters?

4 A. Okay.

5 CHAIRMAN ARGENZIANO: Just to give you notice,
6 what we're going to do is have you answer that question.
7 And then we're going to -- I hate to do it, but we're
8 going to have to break for lunch so that we can get this
9 day going the right way and then come back and continue
10 with the witness and redirect. Otherwise, we're going
11 to mess up our transcriber who is, new transcriber
12 coming in at 2:00. So as much as I hate to break it up
13 --

14 MR. HOLLIMON: Well, there's really no
15 question pending. I just was, I'm going to refer to the
16 letters and the application when we get started again.

17 CHAIRMAN ARGENZIANO: Okay. Okay. Good then.
18 There's no question. Then let's just break for lunch
19 and be back at 20 after 2:00, a little over an hour.
20 Thank you.

21 (Lunch recess taken.)
22
23
24
25


1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorneys or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 26th day of July,
19 2010.

20
21
22
23
24
25

LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734